



HJF 3743

PATENT
655.00955

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of) HEADER-LESS VEHICLE RADIATOR
VIKTOR BROST et al.) Group Art Unit: 3743
Serial No.: 09/837,072) Examiner: Tho V. Duong
Filed: April 18, 2001)

RESPONSE

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Commissioner for Patents
Washington, D.C. 20231

Sir:

In response to the Office Action dated October 1, 2002 (Paper No. 11) Applicants respectfully traverse the finality of the above referenced Office Action and request withdrawal of the finality because it is improper.

**CERTIFICATE OF
FACSIMILE TRANSMISSION**

I hereby certify that this correspondence is being facsimile transmitted (703/308-7764) to the United States Patent and Trademark Office on the date shown below.

October 15, 2002.

Bertha Jackson
Bertha Jackson

More specifically, the present Office Action provides new ground for rejection of claim 12 (unpatentable over Bengtsson and Donaldson and further review of Potier 6,044,554) which was not necessitated by Applicants prior amendment. Claim 12 has never been amended in the application. Furthermore, while claim 12 was rejected under 35 U.S.C. §112 in the prior Office Action based on an assertion by the Examiner that "the step of adapting one end of each of said tube . . . by inserting a forming tube into said one end of each of said plurality of tubes" was not adequately shown in the drawings, claim 12 does not contain the language to which the Examiner was objecting, as was noted in Applicants prior Response. Claim 12 characterizes the step of adapting one end of each said tube as being carried out after assembling the radiator core. Thus claim 12 focuses on the sequence of steps in the recited method, not on how a particular step is performed. Importantly, in the prior Office Action, the Examiner never objected to or discussed the language in claim 12 in making the improper rejection thereof. Rather, the Examiner relied solely on the language which is contained only in claim 13. In response to this rejection, Applicants amended Fig 4c so as to illustrate the language recited in claim 13 and noted the improper grounds for rejection of claim 12. There is nothing in the amendment of Fig. 4c that would add further explanation to the characterization recited in claim 12 which, as discussed above, is limited to stating in what order certain of the steps of the method are performed. Accordingly, there is nothing in any of Applicants' prior amendments that necessitated the current §103 rejection of claim 12 or prevented the rejection from being

made earlier in the prosecution of this application. The final rejection is improper where, as here, "the Examiner introduces a new ground of rejection that is neither necessitated by Applicants amendment of the claims nor based on information submitted in an Information Disclosure Statement filed during the period set forth in 37 CFR 1.97(c) with a fee set forth in 37 CFR 1.17(p)." M.P.E.P 706.07(a).

In view of the foregoing, Applicants respectfully request withdrawal of the finality of the present Office Action and early notification of the same well in advance of the expiration of the shortened three month period for response.

Respectfully submitted,



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October 15, 2002

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